THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.17598 of 2007

% 20.08.2007

Between:

Sri P. Bhushaiah

…Petitioner

And

District Cooperative Officer,
Guntur District, and others.

…Respondents

! COUNSEL FOR PETITIONER: Sri DV. Bhadram,

^ COUNSEL FOR RESPONDENTS: G.P. for Cooperation

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? CITATIONS:

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ORDER:

The petitioner functioned as Secretary of the Primary Agricultural Co-operative Society Limited, Lingamguntla of Guntur

District. In the year 1990, one Mr.D.Bhadrachalam, the 4th respondent, was functioning as its President. The District Co-operative Officer, the 1st respondent, ordered inspection under Section 52 of the A.P. Co-operative Societies Act, 1964 (for short '*the Act*'), against the said society, on the basis of a report submitted by the Divisional Co-operative Officer, Guntur.

The inspection was conducted, and a report was submitted on 31-08-1991. It was pointed out that fraud, to the tune of several lakhs of rupees, was committed by the petitioner and the 3rd respondent. It was suggested that the surcharge proceedings, under Section 60 of the Act, be initiated against them.

The Deputy Registrar of Cooperative Societies, the 2nd respondent, initiated surcharge proceedings against the petitioner and the 3rd respondent. After considering their explanations, the 2nd respondent held the 3rd respondent liable for certain amount, through his orders dated 23-11-1992. Aggrieved thereby, the 3rd respondent filed O.A.No.58 of 1994 before the A.P. Co-operative Tribunal, Vijayawada (for short '*the Tribunal*'). The Tribunal allowed the O.A., through its order dated 18-04-2000, mainly on the ground that adequate opportunity was not given to the 3rd respondent. After setting aside the surcharge order, the Tribunal remanded the matter to the 2nd respondent, for fresh enquiry and disposal.

On remand, the 2nd respondent issued notice to the petitioner as well as the 3rd respondent. Through his order dated 08-07-2005, the 2nd respondent exonerated the 3rd respondent, but held the petitioner liable for the amount of Rs.1,36,785/-, with interest at 18%

per annum, from 01-06-1989. Aggrieved by this order, the petitioner filed O.A.No.101 of 2005 before the Tribunal. The O.A. was dismissed on 12-01-2007. Hence, this writ petition.

Learned counsel for the petitioner mainly contends that the entire surcharge proceedings are vitiated, on account of the fact that the very basis*, viz*., the order of inspection, under Section 52 of the Act, was contrary to law. He submits that the scope of inspection, under Section 52, is very limited, and despite the same, the 1st respondent ordered inquiry into the '*working of the society'*, which is permissible under Section 51. He places reliance upon an order passed by a Division Bench of this Court in Writ Appeal No.1262 of 2004, dated 01-09-2004. According to him, the defect in the inspection, under Section 52 is a pure question of law, and it can be raised at any stage. He did not urge any other grounds, except these.

Learned Government Pleader for Co-operation, on the other hand, submits that the inspection ordered by the 1st respondent was perfectly legal, and at any rate, the petitioner did not raise any objection for more than one-and-half decades, during which, the proceedings were pending and adjudicated before one forum or the other.

In view of the submissions made by the learned counsel for the parties, the area of controversy is restricted to the one, into the scope and ambit of inspection under Section 52 of the Act.

Sub-section (1) thereof, reads as under:

> "**Sec.52(1) Inspection**: The Registrar may, of his own motion or on the application of a creditor of a society, inspect or direct any person authorized by him by a general or special order in this behalf to inspect the books of the society.
>
> [Such inspection shall be completed within a period of three months from the date of order of inspection].
>
> Provided that no such inspection shall be made or

directed on the application of a creditor unless the creditor:-

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security, for the costs of the proposed inspection as the Registrar may require".

[*Sub-section (2) is omitted, since it is not necessary for the purpose of this case*].

From a perusal of the provision, extracted above, it is evident that the Registrar may order inspection of the books of the society, on his own motion, or on an application of a creditor, subject to the conditions mentioned therein. In the instant case, the 1st respondent ordered inspection on the basis of some information received by him, particularly in the form of a report, received from the Divisional Cooperative Officer, Guntur. Strong exception is taken by the learned counsel for the petitioner, for using the expression '*into the affairs of the Lingamguntla Primary Agricultural Co-operative Society Limited*', while ordering inspection under Section 52. However, a perusal of the order, dated 11-01-1990, clearly indicates that the intention was, only to cause inspection, strictly in terms of Section 52, and there is nothing to indicate that the scope of inspection was expanded into the one, of general inquiry, into the affairs of the society. Further, the petitioner participated in the inspection, by producing the voluminous records. At no point of time he felt, that the Inspection Authority had deviated from the scope and ambit of Section 52 of the Act.

Some times it may so happen, that even though the inquiry is conducted strictly in accordance with the relevant provision of law, the report may contain something, which is beyond the relevant provision. In such case, the aggrieved party has to raise an objection, at the

earliest point of time, and assail the same. The officer, who conducted the Inspection; submitted his report
on 31-08-1991. Elaborate discussion, running into several pages, was undertaken. The findings were summed-up, with reference to the records, and account books of the society. By the time the inspection was conducted, the Managing Committee was already superceded, and the findings were restricted to the verification of the loan accounts. It was ultimately found that the petitioner and the 3rd respondent have committed financial irregularities.
This report was also not challenged by the petitioner, either before the Tribunal, or before any other forum. On the other hand, he participated in the surcharge proceedings, without any demur.

After the matter was remanded by the Tribunal, at the instance of the 3rd respondent, surcharge proceedings were initiated afresh, against the petitioner, as well as the 3rd respondent. Even at this stage, the petitioner did not raise any objection, as to the legality of the proceedings, under Section 52 of the Act. He suffered an order of surcharge, in the hands of the 2nd respondent. In the O.A.No.101 of 2005 filed by him, the petitioner made an effort to satisfy the Tribunal, mostly on the facts, and it was not even pleaded, that the very basis for the surcharge proceedings is shaking. The ground is raised for the first time, before this Court.

It is no doubt true, that the pure question of law can be raised at any point of time, as long as the proceedings are alive, before one forum or the other. The ground raised by the petitioner, however, is a mixed question of fact and law. It is not alleged that the Authority, who ordered, or the one, who conducted inspection under Section 52, are not vested with the powers. The objection is only as to the scope. It is

not even remotely pointed out, that the inspection conducted by the concerned official had exceeded the scope of Section 52 of the Act.

In Writ Petition No.13100 of 2004, this Court was dealing with the matter, where the very order of inspection, under Section 52 of the Act, was challenged. The writ petition was dismissed *in limini*. In a Writ Appeal filed by the aggrieved party, the counsel, representing the concerned officials, had conceded that the order of inspection, under Section 52, was not tenable. The Division Bench took note of the same and had set aside the order, directing the inspection under Section 52 of the Act. The facts of that case are totally different from the one, at hand. While in that case, the petitioner approached this Court at the earliest point of time, and pleaded the grounds of lack of competence and other similar grounds, the petitioner herein had not only participated in the inspection, under Section 52 of the Act, but also in the surcharge proceedings, and the proceedings before the Tribunal, without raising any objection.

The writ petition fails, and it is accordingly dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 20-08-2007

Note: *L.R copy to be marked.*

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